BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	

PETITION FOR RECONSIDERATION AND CLARIFICATION OF THE CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION

CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION
Michael F. Altschul
Vice President, General Counsel

Randall S. Coleman
Vice President for
Regulatory Policy and Law

1250 Connecticut Avenue, N.W.
Suite 200
Washington, D.C. 20036
(202) 785-0081

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SUMMARY

The task of reforming the federal subsidy system to enable local competition to develop and to comport with the statutory language of the 1996 Act is both difficult and complex. In setting these new rules, the Commission must be sure that it neither alters the long-standing and highly successful regulatory regime applicable to CMRS nor fails to account for CMRS providers in general. The Universal Service Order leaves many issues regarding the status of CMRS unresolved. In this petition for reconsideration and clarification, CTIA seeks resolution of these issues.

The most important issue in this proceeding for CMRS is the effect of the new universal service provisions on the industry's traditional exemption from State rate and entry regulation. It is unclear whether State universal service rules apply at all to CMRS providers where they are not substitutes for the incumbent LEC. But there should be no doubt that Section 332 of the Act prohibits any State universal service rule from regulating the rates charged by CMRS providers. A narrow exception to this rule has apparently been established for schools and libraries. But neither this exception nor any part of the Communications Act should be read to grant States the authority to regulate CMRS prices either through universal service or some other means.

In addition, there are several areas in which the Universal Service Order fails to account adequately for CMRS. Thus, while the Commission went a long way towards ensuring the competitive and technological neutrality of federal universal service rules,

it did not explicitly mandate that States comply with this requirement as well. Moreover, the Commission did not provide any guidance as to how CMRS providers should distinguish interstate from intrastate traffic for purposes of determining their federal contribution obligations. This issue is especially complex for CMRS providers since they have not traditionally taken into account state borders in designing their networks or billing systems. CTIA therefore asks that the Commission provide CMRS with simple and flexible guidelines for tracking jurisdictional traffic.

Finally, the Commission has left unresolved the manner in which universal service fund contributors may recover their contributions from their customers under contract. CTIA therefore asks that the Commission clarify that carriers may recover a reasonable share of their universal service contributions from contract customers. Carriers should be permitted to identify this extra cost as recovering the costs of universal service contribution requirements. To the extent the Universal Service Order prohibits such a characterization, the Commission should reconsider this decision.

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The Cellular Telecommunications Industry Association ("CTIA")[1] submits this Petition for Reconsideration and Clarification in the above-captioned proceeding.

I. SECTION 332 STRICTLY LIMITS THE APPLICATION OF STATE UNIVERSAL SERVICE RULES TO CMRS.

In the 1993 amendments to Section 332,[2] Congress established the limited framework under which States are permitted to require CMRS carriers to contribute to their universal service programs.[3] Specifically, Congress proscribed the States' authority to regulate for universal service concerns in the following manner:

> Nothing in this subparagraph shall exempt providers of commercial mobile services (where such services are a

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1 CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers all Commercial Mobile Radio Service ("CMRS") providers, including 48 of the 50 largest cellular and broadband personal communications service ("PCS") providers. CTIA represents more broadband PCS carriers and more cellular carriers than any other trade association.

2 47 U.S.C. § 332.

3 Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI § 6002(b), 107 Stat. 312 (1993).

> substitute for land line telephone exchange service for a substantial portion of the communications within such State) from requirements imposed by a State commission on all providers of telecommunications services necessary to ensure the universal availability of telecommunications service at affordable rates.[4]

Congress could hardly have been more clear. However, Congress further explained in the Conference Report that:

> [T]he Conferees intend that the Commission should permit States to regulate radio service provided for basic telephone service if subscribers have no alternative means of obtaining basic telephone service. If, however, several companies offer radio service as a means of providing basic telephone service in competition with each other, such that consumers can choose among alternative providers of this service, it is not the intention of the conferees that States should be permitted to regulate these competitive services simply because they employ radio as a transmission means.[5]

Through Section 332, Congress explicitly preempted the States' ability to establish rate and entry regulations. Preemption was intended to lift State-imposed entry barriers which had impeded the growth and development of a national wireless infrastructure.[6] In drafting Section 332, Congress acceded to the States' legitimate concerns that they be able to require contributions into their respective universal service

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4 47 U.S.C. § 332((c)(3)(A) (emphasis added).

5 H.R. Conf. Rep. No. 213, 103rd Cong., 1st Sess. 493 (1993) (emphasis added).

6 See H.R. Rep. No. 111, 103rd Cong., 1st Sess. 260 (1993) ("To foster the growth and development of mobile services that, by their nature, operate without regard to state lines as an integral part of the national telecommunications infrastructure, new section 332(c)(3)(A) also would preempt state rate and entry regulation of all commercial mobile services.")

programs by telecommunications service providers. Congress was concerned, however, that States not be permitted to use their authority over intrastate universal service as a means of regulating rates and entry of CMRS providers contrary to the intent of Section 332. Thus, Congress substantially restricted the scope of State jurisdiction over CMRS for universal service purposes.

A. The FCC Summarily Dismissed The Application Of Section 332 To Intrastate Universal Service Programs Without Adequately Explaining Its Reasoning.

Contrary to the express terms of Section 332, the Commission concluded in the Universal Service Order that it "agree[s] with the Joint Board and find[s] that section 332(c)(3) does not preclude states from requiring CMRS providers to contribute to state support mechanisms."[7] The Commission recognized that many commenters, including CTIA, contended that Section 332 circumscribes the States' ability to require contributions into their universal service programs. The Commission also noted that a Connecticut Superior Court determined that the State could not require cellular carriers to make payments towards the intrastate universal service and lifeline programs.[8] However, without

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[7] Federal-State Joint Board on Universal Service, Report and Order in CC Docket No. 96-45, FCC 97-157 at ¶ 791 (released May 8, 1997) ("Universal Service Order"). See, also Federal and State Joint Board on Universal Service, Recommended Decision in CC Docket No. 96-45, 12 FCC Rcd 87 at ¶ 791 (1996) (Dismissing the relevance of Section 332 without any discussion or analysis regarding its application to CMRS providers.)

[8] Universal Service Order at ¶ 791; see, also Metro Mobile v. Connecticut Department of Public Utility Control, No. CV-95-0051275S, 1996 Conn. Super. LEXIS 3326 (Conn. Super. Ct.

analysis, the Commission went against the weight of the comments and the Connecticut Superior Court's decision, offhandedly dismissing the relationship between Section 332 and Section 254.[9]

Under well settled principles of administrative law, the Commission is required to adequately explain its decisions. Moreover, agency decisions must be supported by the evidence in the record.[10] The D.C. Circuit has held that "[a]n agency must . . . 'examine the relevant data and articulate a satisfactory explanation for its action.' Accordingly, we will not uphold an agency's action where it has failed to offer a reasoned explanation that is supported by the record."[11] The Commission's facile resolution of the complex relationship between Sections 332 and 254 in this instance is insufficient to satisfy the requirements of law as well as the intent of Congress.[12]

Dec. 9, 1996) (The Court held that "[b]y expressly exempting from preemption those assessments which are made on cellular providers in a state in which cellular service is a substitute for land line service, Congress left no ambiguity that cellular providers in states in which cellular is not a substitute for land line service fall under the umbrella of federal preemption.")

9 47 U.S.C. § 254.

10 See 5 U.S.C. § 706(2)(A) (The APA requires courts to "hold unlawful and set aside agency action, findings, and conclusions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law").

11 American Telephone and Telegraph Co. v. FCC, 974 F.2d 1351, 1354 (D.C. Cir. 1992) (quoting Motor Vehicles Mfrs. Ass'n v. State Farm Mut. Auto Ins. Co., 463 U.S. 29 (1983)).

12 The only evidence of any analysis provided by the Commission in the Universal Service Order is the italicization of three words ("in this subparagraph") in quoting Section 332(c)(3). See Universal Service Order at ¶ 791. This hardly provides an adequate basis upon which to review this decision on

In its comments, CTIA, along with several other parties, provided the Commission with well-reasoned explanations supporting limited application of intrastate universal service programs to CMRS providers. The Commission, however, apparently failed to seriously consider any of the issues raised by wireless interests. The Commission should now take the opportunity to revisit this matter and establish that Section 332 does in fact dictate the parameters under which States can require contributions to their intrastate programs.

B. The FCC Should Not Read Section 332 Out Of The Universal Service Process.

Section 254(f) preserves the States' authority to establish universal service programs that are applied fairly to all telecommunications carriers and are consistent with the Commission's rules. Thus, under this provision, CMRS providers, as telecommunications carriers, would be required to contribute to intrastate universal service programs. As noted above, though, Section 332 establishes a more narrow authorization for State regulation of CMRS for the purposes of universal service.[13]

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appeal. See Dickson v. Secretary of Defense, 68 F.3d 1396, 1404 (D.C. Cir. 1995) (quoting Pension Benefit Guaranty Corp. v. LTV Corp., 496 U.S. 633, 654 (1990)) (explaining that the arbitrary and capricious standard requires agencies to at least "provide an explanation that will enable the court to evaluate the agency's rationale at the time of the decision").

[13] In its reply comments, CTIA presented the Commission with several principles of statutory construction established by the Supreme Court which support the continued application of Section 332 to preempt intrastate universal service contribution mechanisms. Federal-State Joint Board on Universal Service, CC Docket No. 96-45, CTIA Reply Comments at 6-7 (filed Jan. 10, 1997). See e.g. Radzanower v. Touche

This obvious conflict requires Commission clarification that Section 332, when read in conjunction with Section 254, still plays a critical role in limiting States' rights to regulate the rates of CMRS providers.

Section 332 explicitly requires that "no state or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service."[14] Since 1993 the Commission has consistently enforced this prohibition. On at least seven different occasions the Commission has denied requests by States to reinstate their authority to regulate the rates of CMRS providers.[15] The Commission has concluded that "Congress has explicitly amended the Communications Act to preempt state and local rate and entry regulation of commercial mobile radio services without regard to Section 2(b)."[16] Nothing in Section 254, or more generally in the Telecommunications Act of 1996, should be viewed as altering that conclusion. The Commission should uphold this principle by mandating that States not use their very limited authority under Section 254 to collect contributions for universal service funds as a guise for regulating the rates of CMRS providers.

Ross & Co., 426 U.S. 148, 153 (1976); Rusello v. U.S., 464 U.S. 16, 23 (1983).

14 47 U.S.C. § 332(c)(3)(A).

15 See, e.g. Petition of the Connecticut Department of Public Utility Control to Retain Regulatory Control of the Rates of Wholesale Cellular Service Providers in the State of Connecticut, Report and Order in PR Docket No. 94-106, 10 FCC Rcd 7025 (1995).

16 Id. at ¶ 5.

In the Universal Service Order, the Commission concluded that States may require CMRS providers to make contributions to State support mechanisms. The Commission went on to note that Section 332(c)(3) prohibits states from regulating the rates charged by CMRS providers.[17] As to the former, the Commission's resolution of the ambiguity between Sections 332 and 254 is a functional solution for two conflicting statutory provisions. The Commission should clarify, however, that this is a narrow reading of both provisions needed to reconcile their discord. Regardless of the Commission's conclusions concerning contributions, Section 332 still does not permit States to regulate CMRS rates, even for the purpose of intrastate universal service.

The States' limited authority to collect universal service contributions from CMRS providers must be circumscribed so as not to affect the rates CMRS providers charge. For instance, a State mandate that CMRS providers charge a special rate for a particular class of subscribers, for the purpose of intrastate universal service, violates the express terms of Section 332. Such a State requirement, even in light of Section 254(f), cannot be reconciled with Section 332 or with the intent of Congress. States must also be prohibited from utilizing indirect subsidy schemes, such as rate averaging, that have the affect of altering CMRS rates.

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[17] Universal Service Order at ¶ 791.

Defining the boundaries of the States' authority to collect for intrastate universal service programs is consistent with the Commission's primary jurisdictional authority to interpret its own statute.[18] In this instance, the Commission has established a second narrow exception to the preemption provisions of Section 332. In addition to collecting contributions for universal service funds, States can apply the discounts established in the Universal Service Order to intrastate CMRS services provided to qualifying schools and libraries. The Commission must clarify, however, that this is an extremely narrow exception, made possible only by an explicit federal waiver to the normal application of Section 332. Moreover, the States may apply discounts to CMRS only to the extent they are absolutely consistent with the Commission's rules. In the more likely instance, when the Commission has not explicitly granted the States authority to set discounts on rates for particular services, States do not have independent jurisdiction over the rates charged by CMRS providers.

Thus, States do not have the authority to apply either a lower or a higher schools/libraries discount than would be applicable under the federal rules to CMRS. While this may appear to be a somewhat formalistic distinction, it is nonetheless critical. Absolute vigilance in preserving the exemption of CMRS from rate regulation (and all the

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[18] See Chevron, U.S.A., Inc. v. NRDC, Inc., 467 U.S. 837, 842 (1984).

inefficiencies it creates) is necessary to enable the industry to continue its historic growth and record of increased efficiency. Ultimately, this exemption rests on the subject matter jurisdiction of the Commission which must be defined carefully and clearly.

In sum, while Section 254(f) permits States to adopt universal service programs consistent with the Commission's, Section 332 limits that authority as it relates to CMRS rates. Although inconsistent with the express terms of Section 332, the Commission has concluded that CMRS providers can be required to contribute to State universal service programs. However, to permit States to regulate the rates CMRS providers charge, even for universal service, would eviscerate Congress' intent that market forces, rather than rate regulation, govern CMRS provision of service.

Finally, it is important to point out that this prohibition on state rate regulation has implications for the manner in which CMRS providers may recover their contribution obligation from end users.[19] In the Universal Service Order, the Commission mandated that fund contributors may only recover their contribution obligations from rates on interstate services.[20] The Commission did so to avoid the legal and political issues involved in requiring carriers to ask states to alter rates to permit

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[19] See Section IV, infra, for a discussion of the manner in which such costs should be recovered from customers.

[20] See Universal Service Order at ¶¶ 825, 838.

recovery. This problem does not exist, however, for CMRS providers, since they are not subject to state rate regulation. Moreover, any requirement for CMRS providers to pass-through costs only on interstate rates would only add to the complex and difficult billing issues raised by the Universal Service Order.[21] The Commission should therefore clarify that CMRS providers may apply pass-throughs to all of their services.

II. THE COMMISSION MUST CLARIFY THAT STATE UNIVERSAL SERVICE PROGRAMS MUST BE COMPETITIVELY AND TECHNOLOGICALLY NEUTRAL.

Section 254(f) permits States to establish universal service rules only if they are "not inconsistent" with the Commission's rules.[22] From this principle, the Commission in the Universal Service Order found that "it is reasonable to conclude that Section 254 grants the Commission the primary responsibility and authority to ensure that universal service mechanisms are 'specific, predictable, and sufficient'" to fulfill the requirements of Section 254.[23]

In exercising its authority the Commission has correctly adopted "competitive neutrality" as a principle upon which all

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21 See Section III, infra, for a detailed discussion of these issues.

22 See 47 U.S.C. § 254(f).

23 Universal Service Order at ¶ 816 (citation omitted). See also id. at ¶ 818 ("the statutory scheme of section 254 demonstrates that the Commission ultimately is responsible for ensuring sufficient support mechanisms, that the states are encouraged to become partners with the Commission in ensuring sufficient support mechanisms, and that the states may prescribe additional, supplemental mechanisms").

universal service rules must be based.[24] The Commission further concluded that the notion of competitive neutrality "should include technological neutrality."[25] The Commission interpreted this principle, among other things, (1) to require a definition of supported services that is competitively and technologically neutral;[26] (2) to require that providers using all technologies, including wireless, may qualify as eligible carriers under Section 214(e);[27] and (3) to prohibit States from adopting service area definitions under Section 214(e) that effectively prevent CMRS providers from attempting to become eligible carriers.[28]

But while the Commission established itself as the primary arbiter of universal service rules and firmly established competitive and technological neutrality as one such rule, it did not clarify that States must adhere to this principles when establishing their universal service subsidy schemes. Accordingly, CTIA respectfully requests that the Commission clarify that State universal rules established pursuant to Section 254(f) must not be inconsistent with the principle of competitive and technological neutrality.

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24 See id. at ¶ 47.

25 See id. at ¶ 49.

26 See id. at ¶ 61.

27 See id. at ¶¶ 145-147.

28 See id. at ¶ 185.

Thus, just as with federal universal service programs, States should not be permitted to established a list of services for eligible carriers that would effectively exclude CMRS providers. Similarly, States should be prohibited from establishing other eligibility requirements or service area definitions for State funds that would have a similar effect. Any such rules would be impermissible under Section 254(f) as inconsistent "with the Commission's rules to preserve and advance universal service."[29]

III. THE COMMISSION MUST CLARIFY THE MANNER IN WHICH CMRS CONTRIBUTORS TO THE UNIVERSAL SERVICE SUBSIDY PROGRAMS DISTINGUISH BETWEEN INTERSTATE AND INTRASTATE REVENUES.

In the Universal Service Order, the Commission required providers of interstate telecommunications service (including CMRS) to contribute to the schools, libraries and rural health care funds based on their share of both intrastate and interstate (including international) end user revenues.[30] On the other hand, the Commission required contributors to pay into other federal subsidy funds based on their share of aggregate interstate (again, including international) end user revenues.[31] Thus, regardless of whether CMRS providers are required to contribute to State universal service funds, the FCC's universal

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29 See 47 U.S.C. § 254(f).

30 See Universal Service Order at ¶ 837.

31 See id. at ¶ 833. The Commission stated that it may revise this approach for contributions based on forward-looking cost model. See id. at ¶ 832.

service rules will impose an obligation to keep separate track of interstate and intrastate end user CMRS revenues.

Unfortunately, the Commission offered little guidance in the Universal Service Order as to how fund contributors should separate revenue along jurisdictional lines. The Commission stated only that end user revenues from calls originating in one State and terminating in another and end user revenues from private and WATS lines carrying over 10 percent interstate traffic are interstate.[32]

While these two principles may assist traditional wireline telecommunications carriers, they offer little guidance to providers of mobile services. As explained below, CMRS providers face unique and difficult problems in trying to track end user revenues along geopolitical lines. CTIA therefore requests that the Commission provide further guidance for CMRS providers as to how they should fulfill this obligation. In doing so, the Commission should adopt rules that account for both the complexity and diversity of the issues raised by the universal service regime.

A. CMRS Providers Face Unique Problems In Distinguishing Interstate from Intrastate End User Revenues.

In designing their networks and billing systems, CMRS providers have not generally taken into account the location of State borders. CMRS license areas often cover more than one

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[32] See id. at ¶ 778.

State.[33] Moreover, the conventional assumptions about traffic patterns are not applicable to CMRS. This fact has been recognized since the initial interLATA waiver requests for the provision of cellular telephone service under the AT&T consent decree.[34] As a result, tracking the jurisdictional nature of CMRS traffic raises complex engineering and billing issues that are complicated further by the diversity of CMRS networks and billing systems.

1. Tracking The Jurisdictional Nature Of CMRS Traffic Raises Complex Engineering And Billing Issues

There are many examples of engineering choices made by CMRS providers (to maximize efficiency rather than to comply with regulation) that illustrate this problem. For example, the area served by a particular CMRS antenna sometimes covers more than one State. The placement of the antenna generally determines the origination point for a call for the purposes of a CMRS provider's billing systems. Thus, if an antenna located in Illinois serves part of Illinois and part of Indiana, calls from

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33 See 47 C.F.R. § 22.909 (establishing Metropolitan Statistical Areas and Rural Service Areas for cellular licenses; many of these regions cover areas in more than one State); 47 C.F.R. § 24.202 (establishing Major Trading Areas and Basic Trading Areas for PCS licenses; again, many of these regions cover areas in more than one State).

34 See United States v. Western Elec. Co., 578 F. Supp. 643 (D.D.C. 1983) (granting waiver requests for interLATA provision of cellular service for nine markets because the benefits of allowing BOC-provided cellular service areas to follow automobile traffic that did not respect LATA boundaries outweighed any anticompetitive effects the waivers may have).

both States will be recorded by the CMRS provider as originating in Illinois.[35]

Call hand-offs cause additional complications. Where a mobile customer originates a call at a particular point and then drives into another cell area (i.e., the area served by a particular antenna), a CMRS system will pass the call to the antenna serving the cell which the customer has entered. The State in which the hand-off takes place is not recorded for billing purposes by CMRS providers. Thus, if a subscriber originates a call while driving in Illinois and then crosses the border into Indiana, even if the call is handed off to another antenna in Indiana, the location of the antenna in Indiana is not recorded for billing purposes. Adding this functionality will likely be both costly and complex.

Further, the efficient use of switching often causes a CMRS provider to serve areas in more than one State with a single switch. As a result, calls originating and terminating in Indiana may nonetheless be transported to a switch in Illinois and then sent back across the State line for termination. Without Commission guidance it is hard to know how to classify such traffic.

This issue is further complicated by the dynamism of CMRS networks. For example, to maximize the efficiency of its

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[35] In this section, Illinois and Indiana are used throughout for consistency. In fact, the complexities of interstate service boundaries occur wherever a CMRS system extends across a state line.

network, a CMRS provider may aggregate traffic from a multistate region at a single switch for a period of time only to change its network configuration (possibly due to increased traffic volumes) to allocate more switches for the area in question. Thus, a call that may have crossed State lines for aggregation at a switch at one time may not cross State lines after a modification in the network. These periodic alterations in traffic patterns will make it more difficult to track the exact course of each call.

Moreover, use of least-cost routing over existing network configurations only adds further to the complexity of this endeavor. A carrier may have several ways to deliver a particular call over a single network configuration. At any particular time, a different call path may be used. Some of these call paths may result in State lines being crossed while others may not.

2. The Diversity Of CMRS Networks Further Complicates The Issue Of How To Track The Jurisdictional Nature Of CMRS Traffic.

It is critical to recognize that CMRS networks are characterized by their heterogeneity. In each CMRS network, different conditions have caused CMRS providers to choose different approaches to network design and billing systems. One would expect this result, of course, in an industry that has traditionally been driven by competition and the needs of mobile customers rather than a historical need to comply with a dual regulatory structure.

Indeed, this diversity is perhaps most manifest in CMRS billing systems. In order to determine whether a call is

interstate or intrastate, it is generally understood that the originating and terminating points of the call must be identified. In a traditional landline system, the NPA-NXX will identify the jurisdictional location of the calling and the called parties. In a mobile environment, however, additional data may be necessary to determine the call origination and termination points and, hence, the jurisdictional nature of the call.[36]

The problem is that the call data generated and collected by each carrier will differ, depending on the switch and billing vendors employed by the carrier. Each mobile switch generates call information which is in turn used for billing purposes. The information generated from the switch, however, varies among switch vendors. Additionally, such information varies depending on when the switch was last updated. A single carrier, then, may be collecting very different information regarding the calling and called parties at each of its switches. As a result, some CMRS carriers may have access to much more detailed information about the nature of the calls being made than other carriers

It is even more difficult to determine the nature of a call (i.e., whether a call is intrastate or interstate in nature) in

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[36] In a mobile environment, the NPA-NXX merely corresponds to the billing center with which a subscriber wishes to be associated. For instance, a subscriber who lives in Maryland may choose to have a mobile telephone number in the 202 area code if most of the parties that the subscriber calls or that call the subscriber are in the D.C. area. The mobile NPA-NXX does not correspond, however, to the location of the subscriber.

the roaming context. When a subscriber is roaming on another carrier's system, the "home" system to which the customer subscribes receives only very limited information about the calls that the subscriber makes on the "visited" system. The data required to determine whether a call is intrastate or interstate may not always be available to the home system.[37] Moreover, whether the carrier will obtain the information necessary to make this determination is not under the carrier's own control but, rather, is under the control of the carrier that owns the visited system. While a common record format for passing call data exists, some of the fields associated with the originating and terminating part of a call are considered optional and therefore may not be populated.

B. Rules For Classifying CMRS End User Revenues Should Be Simple And Flexible.

In light of the issues raised by tracking CMRS traffic and the diversity of CMRS networks and billing systems, the Commission should adopt guidelines for CMRS that simplify the tracking process and that are flexible. Requiring CMRS providers to record every CMRS call that crosses state lines, even if technically possible, would be extremely complex, burdensome and expensive. Moreover, any attempt to adopt a "one size fits all" set of detailed rules for CMRS revenue reporting would be unworkable.

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[37] Although more detailed call information is available to the visited system, because the visited system does not charge the roaming customer or "end user" in the roaming context, the home system is the relevant point of reference.

1. The Commission Should Adopt Simplifying Assumptions.

CMRS providers should be permitted to eliminate some of the complexities described above by adopting certain simplifying assumptions as to the jurisdictional nature of end user revenues.[38] The Commission should adopt rules that address problems that are already obvious.

For example, to account for the situation where an antenna serves regions within more than one State, the Commission should permit CMRS providers to adopt the location of the initial antenna location as the origination point of a call. The Commission adopted just this assumption in the Interconnection Order for determining whether reciprocal compensation applies.[39] It should now adopt this assumption for universal service as well.

There are of course many more issues that CMRS will face in adapting to the new universal service regime. The Commission should encourage carriers to come forward with specific problems and should resolve them in a pragmatic fashion. Over time it

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38 Of course, these simplifying assumptions should be optional. If a carrier wishes to track traffic more precisely, it should be permitted to do so. This is similar to the approach the Commission took in defining Cellular Geographic Service Areas ("CGSAs"). See 47 C.F.R. § 22.911(b) (permitting cellular providers to adopt alternative methods of determining the size of their CGSAs).

39 See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order in CC Docket No. 96-98, 11 FCC Rcd 15499 at ¶ 1044 (1996) ("For administrative convenience, the location of the initial cell site when a call begins shall be used as the determinant of the geographic location of the mobile customer") ("Interconnection Order").

should be possible to establish a fairly comprehensive set of assumptions that both limit the impact of universal service on network design and obviate the need for complex alterations to CMRS billing systems.

2. The Telecommunications Relay Service Rules Should Form The Basis For Tracking Inter- and Intrastate Revenue For Universal Service Purposes.

The most appropriate starting point for a flexible regime for classifying CMRS revenues are the rules governing contributions to the telecommunications relay service ("TRS") fund. The Commission's TRS rules require all providers of interstate telecommunications services, including CMRS, to contribute to TRS based on their share of gross interstate and international revenues as defined in the TRS Fund Worksheet.[40] The TRS Worksheet requires carriers to report gross revenues for "telecommunications services" for a particular calendar year.[41] Carriers are instructed that "[g]ross revenues should not include non telecommunications services, such as the lease of customer premises equipment."[42] The Worksheet requires further that carriers "estimate the percentage of [gross telecommunications service] revenues" that are interstate or international.[43] The Worksheet states that carriers not subject to the FCC's Part 32

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40 See 47 C.F.R. § 64.604(c)(4)(iii)(A),(B); TRS Fund Worksheet, FCC 431, March 1997 ("TRS Worksheet" or "Worksheet").

41 See TRS Worksheet at Section III.B.1.

42 Id.

43 Id. at Section III.B.2.

uniform system of accounts, such as CMRS providers, "may elect to rely on a special study to estimate the percentages"[44] of interstate/international traffic.

The TRS approach offers the simplicity and flexibility necessary to make compliance with universal service contribution obligations workable for CMRS. Importantly, TRS does not require carriers to comply with detailed, disaggregated reporting requirements. This makes it easier for non-rate-regulated entities to report earnings. The grant of explicit permission to rely on special studies eases compliance burdens by enabling contributors to use statistically reliable sample studies to track traffic. Of course, CMRS providers should be permitted to keep track of all traffic for universal service reporting if they wish. However, the Commission should permit CMRS providers to rely on special studies for this purpose as well.[45] Indeed, CTIA

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44 Id.

45 In the Interconnection Order, the Commission recognized the need for traffic studies for determining the application of reciprocal compensation for CMRS traffic. See Interconnection Order at ¶ 1044. The Commission stated as follows:

> We recognize that, using current technology, it may be difficult for CMRS providers to determine, in real time, which cell site a mobile customer is connected to, let alone the customer's specific geographic location. This could complicate the computation of traffic flows . . . given that in certain cases, the geographic locations of the calling party and the called party determine whether a particular call should be compensated under transport and termination rates established by one state or another, or under interstate or intrastate access charges. We conclude, however, that it is not necessary for incumbent LECs and CMRS providers to be able to ascertain geographic locations when determining the rating for any particular call at the moment the call is connected. We conclude that parties may